

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY MONROVIA

UNCLAS STATE 124672

E.O. 11652: N/A

TAGS: EAIR, LI

SUBJECT: CIVAIR - USG/GOL BILATERAL CONSULTATIONS

REF: MONROVIA 3436

1. NEW GOL DRAFT HAS BEEN REVIEWED BY DEPT AND CAB STAFF. WE BELIEVE THAT IT IS A SIGNIFICANT IMPROVEMENT OVER PREVIOUS DRAFT. WE APPRECIATE CONSTRUCTIVE ATTITUDE OF RESPONSIBLE GOL OFFICIALS AS DEMONSTRATED BY THEIR WILLINGNESS TO INCORPORATE PORTIONS OF US STANDARD TEXT WITH REGARD TO FOLLOWING ITEMS: DEFINITIONS, CONTROL OF ADMISSIONS AND DEPARTURES, SAFETY AND SECURITY STANDARDS, SALE OF AIR TRANSPORTATION, EXCHANGE RATES, CURRENCY CONVERSIONS AND REMITTANCES, AIRPORT USER CHARGES, EXEMPTIONS FOR OPERATIONAL IMPORTS; AND REVOCATION OF OPERATING PERMISSION. FOR OUR PART, US AUTHORITIES HAVE NO PROBLEMS WITH LIBERIAN ARTICLES IV(1), VI(5), VIII(3), XI, XVIII.

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2. HOWEVER, THERE ARE SOME REMAINING DIFFERENCES. THE MAJOR ONES ARE AS FOLLOWS:

(A) MULTIPLE DESIGNATION--(1)(USG VERSION): THERE ARE NO RESTRICTIONS IN AGREEMENT ON THE NUMBER OF AIRLINES WHICH MAY BE DESIGNATED BY EACH SIDE. (2) (GOL VERSION):

PRECLUDES MULTIPLE DESIGNATION BY REFERENCE IN AGREEMENT TO AIRLINE" IN SINGULAR. (3) PROPOSAL: THAT AGREEMENT PROVIDE FOR MULTIPLE DESIGNATION BY REFERRING TO "AIRLINES" (PLURAL) THROUGHOUT. ALSO GOL MAY BE ASSURED THAT US WOULD DISCUSS PRACTICAL MEANS OF ADDRESSING ANY GOL CONCERNS ON THIS MATTER.

(B) CAPACITY CONTROLS: (1) (USG VERSION): NO DEFINITION OF CAPACITY IS INCLUDED; NO PREDETERMINATION OF FREQUENCY OF SERVICE OR CAPACITY TO BE OFFERED; PROHIBITION AGAINST UNILATERAL CONTROLS OVER CAPACITY (ART.9E); (2) (GOL VERSION): DEFINES CAPACITY (ART.I(5)); IMPLIES PREDETERMINATION OF CAPACITY BY REFERENCE (IN ARTICLE II AND III) TO 'AGREED SERVICES'; ARTICLE III(1) ALSO IMPLIES THAT AIRLINES SHOULD HAVE REASONABLE LOAD FACTORS; NO PROHIBITION AGAINST UNILATERAL CONTROLS. (3) PROPOSAL: THAT AGREEMENT ITSELF BE OF "BERMUDA" TYPE WITH NO PREDETERMINATION OF CAPACITY. AS WITH DESIGNATION ISSUE, WE BELIEVE THAT THERE MAY BE PRACTICAL ALTERNATIVES FOR ADDRESSING CAPACITY CONCERNS OUTSIDE OF THE AGREEMENT.

(C) OPERATING PERMISSION--(1) (US VERSION): US ART 3 DISCUSSES NEED OF DESIGNATED AIRLINES TO QUALIFY FOR OPERATING PERMISSION "... UNDER THE LAWS AND REGULATIONS NORMALLY APPLIED BY (NATIONAL CIVIL) AUTHORITIES..." (2) (GOL VERSION): ARTICLE II PROVIDES FOR GRANT OF OPERATING PERMISSION "... WITHOUT DELAY..."; (3) PROPOSAL: SINCE GOL VERSION WOULD UNDERMINE US PERMIT PROCESS WHICH UNCLASSIFIED

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IS MANDATED BY US LAW WE PROPOSE THAT RELEVANT ARTICLE REFLECT NEED TO COMPLY WITH DOMESTIC REGULATIONS.

(D) FILING OF SCHEDULES--(1) (US VERSION): DOES NOT REQUIRE SCHEDULE FILING; (2) GOL VERSION): ARTICLE V REQUIRES FILING; (3) PROPOSAL: THERE WOULD BE NO OBJECTION TO LIBERIAN REQUIREMENT (OUTSIDE OF AN AGREEMENT) THAT US AIRLINES FILE SCHEDULES FOR INFORMATIONAL PURPOSES.

(E) RATES ARTICLE--(1) (US VERSION): US ARTICLE 10 STATES THAT RATES ARE SUBJECT TO APPROVAL OF RESPECTIVE AERONAUTICAL AUTHORITIES AND PROVIDES FOR SYSTEM OF FILING AND POSSIBLE INTERGOVERNMENT CONSULTATIONS. (2) (GOL VERSION): ARTICLE VI REQUIRES THAT DESIGNATED AIRLINES AGREE ON RATES; THEY ARE TO BE GUIDED BY APPLICABLE DECISIONS OF IATA. (3) PROPOSAL: US REQUIREMENT AND PROCEDURES DESIGNED TO ENFORCE US ANTITRUST LAWS PLACE RESTRAINTS ON ABILITY OF US AIRLINES TO PARTICIPATE IN RATE SETTING DISCUSSIONS WITH OTHER AIRLINES. THIS WOULD MAKE IT DIFFICULT

FOR US TO ACCEPT LIBERIAN VERSION OF RATE ARTICLE. IT IS SUGGESTED THAT GOL RECONSIDER OUR VERSION.

(F) CONSULTATIONS TO INTERPRET AGREEMENT--(1) (US VERSION) US ARTICLE 12 PROVIDES FOR SUCH CONSULTATIONS; (2)(GOL VERSION); ARTICLE 4 PROVIDES NO CONSULTATIVE MECHANISM FOR INTERPRETING AGREEMENT. (3) PROPOSAL: THAT CONSULTATION MECHANISM ALONG LINES US ART 12 BE PROVIDED FOR.

(G) ARBITRATION--(1) (US VERSION): US ART 13 PROVIDES FOR ARBITRATION PROCEDURE WHICH WOULD BE "CONSISTENT WITH NATIONAL LAW" OF CONTRACTING PARTIES. (2) GOL VERSION): ARTICLE XII PROVIDES FOR BINDING ARBITRATION. (3) PROPOSAL: THAT APPROPRIATE ARTICLE TAKE INTO ACCOUNT ANY DOMESTIC LEGAL REQUIREMENTS.

3. THERE ARE ALSO MINOR DIFFERENCES WHICH INCLUDE THE UNCLASSIFIED

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FOLLOWING: (A) CERTAIN ITEMS IN GOL DRAFT UNNECESSARILY DUPLICATE THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. THESE ARE: LIBERIAN ART.I(9) IS COVERED BY ARTICLE 9 OF CONVENTION; ART.II(4) IS COVERED BY ART.9 OF CONVENTION; ART.IX(1) IS COVERED BY CONVENTION ART.25; ART.IX(2) IS COVERED BY CONVENTION ART.26. IT IS SUGGESTED THAT THESE LIBERIAN ARTICLES BE DELETED ACCORDINGLY.

(B) DEFINITION OF DESIGNATED AIRLINES (LIBERIAN ART.I(8) SHOULD INCLUDE STATEMENT THAT NOTIFICATION OF DESIGNATION SHOULD BE TRANSMITTED THROUGH DIPLOMATIC CHANNELS.

(C) LIBERIAN ART.II(5) SHOULD SET MINIMUM STANDARDS FOR LICENSES AT LEVELS ESTABLISHED PURSUANT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION.

(D) WE BELIEVE IT IS SUPERFLUOUS TO REFER TO ROUTE SCHEDULES AS IN LIBERIAN ARTICLES IV(2) AND XIV. US APPROACH WOULD DEFINE AGREEMENT (US ART.1) INCLUDE THE SCHEDULE WHICH CONFIRMS THE ROUTES.

(E) WE WOULD RATHER OMIT REQUIREMENT RE PROVISION OF STATISTICS ON REQUEST (LIBERIAN ART.V(2). IF INCLUDED, IT WOULD BE PREFERABLE THAT ANY EXCHANGE OF DATA WOULD BE SUBJECT TO MUTUAL AGREEMENT BY CONTRACTING PARTIES.

4. EMBASSY IS REQUESTED TO ADVISE APPROPRIATE GOL AUTHORITIES OF CONTENTS THIS MESSAGE AND TO REQUEST THEIR COMMENTS. WE BELIEVE THAT NARROWING OF DIFFERENCES THROUGH WRITTEN EXCHANGES MAY SERVE TO FACILITATE FAVORABLE OUTCOME OF ANY FUTURE CONSULTATIONS. UPON RECEIPT OF GOL'S

RESPONSE, WE SHALL BE ABLE TO ESTABLISH SCOPE OF UNRESOLVED
ISSUES AND TO SUGGEST DATES FOR AN EARLY MEETING. AS THE
LIBERIAN AUTHORITIES WERE INFORMED ON PREVIOUS OCCASIONS,
ANY DELAYS IN REACHING A BILATERAL AGREEMENT WOULD HAVE NO

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ADVERSE EFFECT ON THE PROSPECTS OF ANY LIBERIAN AIRLINE
WHICH MIGHT WISH TO APPLY FOR A US OPERATING PERMIT TO
OPERATE SERVICES TO A POINT IN THE US.

CHRISTOPHER

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